

FINDING OF NO SIGNIFICANT IMPACT

ALLOW CONSTRUCTION OF NEW STRUCTURE AT HIGH POINT RESERVED ESTATE

CUMBERLAND ISLAND NATIONAL SEASHORE

On February 2, 2009, the National Park Service (NPS) issued an Environmental Assessment (EA) analyzing impacts associated with new construction on the High Point reserved estate at Cumberland Island National Seashore (CUIS or Seashore). The project involves construction of a new residential building on the site of a demolished historic structure, trenching for utilities, and installation of two new septic systems.

The purpose of this document is to record the decision of the NPS and to declare a Finding of No Significant Impact (FONSI) pursuant to the Council on Environmental Quality's (CEQ) regulations for implementing the National Environmental Policy Act Of 1969 (NEPA).

Background

The CUIS was established by Congress as a unit of the National Park System in the Act of October 23, 1972 (Public Law 92-536, codified at 16 U.S.C. 459i *et seq.* (the Act)). The purpose of the Seashore, as stated in Section 1 of the Act, is “to provide for public outdoor recreation use and enjoyment of certain significant shoreline lands and waters of the United States and to preserve related scenic, scientific, and historical values.” Section 6 of the Act sets forth additional preservation mandates by stating that “the seashore shall be administered, protected and developed in accordance with the provisions of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4)” which established the NPS. On September 8, 1982, much of the northern half of Cumberland Island was designated as wilderness or potential wilderness to be managed as part of the National Wilderness Preservation System (Public Law 97-250, 16 U.S.C. 1131 *et seq.*).

At present, the Federal government owns most of the upland areas within the Seashore boundary. However, some pockets of private property remain, together with 18 reserved estates, i.e., tracts in the possession of third parties that will convert to full government ownership after a specified period of time. Among these reserved estates is a 38-acre tract owned by High Point, Ltd. This tract, referred to hereafter as the High Point Compound, is located on the north end of Cumberland Island. The compound originated as a hotel complex in approximately 1880 and operated as such until 1920 when it was purchased as a private hunting and fishing club. In 1930, the property was acquired by the Candler family, which ultimately sold the property to the National Park Foundation in 1982, with subsequent transfer to the NPS. However, the family members still occupy and possess rights to the compound through a reserved estate agreement. Some of the structures remain from the period of historic significance, but only the hotel and the caretaker's house are currently on the NPS List of Classified Structures. One other structure remains from the hotel period, but it has been reworked over the years. There are approximately six other buildings at the compound, as well

as smaller outbuildings, that were constructed some time after 1940. The primary buildings are used as vacation/retreat residences or provide support for those activities.

Purpose and Need for the Proposed Action

The members of High Point, Ltd. wish to complete construction of a new residential building (with septic system) at the High Point Compound, which is part of the High Point - Half Moon Bluff National Register Historic District. The new structure is being built on the former location of a substantially altered barn, which has been demolished. In addition to this work, High Point, Ltd. proposes to modify a separate septic system which has failed at one of the other structures at the compound.

The High Point reserved estate agreement provides that High Point, Ltd.

shall have the right to make normal maintenance and upkeep of the property, to make modern modifications to existing structures and outbuildings, to make repairs and reconstruction to comply with safety and sanitation codes, to replace roofing or siding, to shore up structures threatened by subsidence of soil and to repair or replace utility lines.

(Reserved Estate Agreement Paragraph 12) The foregoing rights are limited, however, by the following provision:

[T]he Reservers shall not add to nor materially alter the character of existing improvements or structures contained within the High Point Compound ... nor perform any new construction or change the topography of the land without first having obtained the permission in writing of the NPS.

(Reserved Estate Agreement Paragraph 11)

The NPS did not become aware of this project until September 15, 2008, after demolition had been completed and construction already begun. The NPS subsequently asked High Point, Ltd. to postpone further construction pending completion of compliance activities under NEPA and the National Historic Preservation Act (NHPA). Having reviewed the plans for new construction supplied by High Point Ltd., NPS proposes to approve construction of the new residential building and septic systems at the High Point Compound. The purpose of the NPS proposed action (i.e., give approval to proceed) is to allow High Point, Ltd. to complete the desired new construction. The NPS has consulted with the Georgia State Historic Preservation Officer (SHPO) regarding this proposed action and the SHPO has concurred with this approach, subject to certain mitigation actions.

The new construction is on the same spot where a combination residence and workshop building had once stood. Built as a barn in 1941 and identified in the National Register of Historic Places (NRHP) nomination, the old building was remodeled and added onto by the Candler family some time after 1976. The first floor of the structure was used as a workshop and storage, and the second floor served as housing. The structure was reportedly in serious disrepair and suffering from extensive termite damage prior to being dismantled. The new residence, which is already partially

constructed, is a 2-1/2 story, wood frame structure built on cinder block piers and it has a footprint of approximately 2,070-square feet.

High Point, Ltd. also proposes to repair a separate, failing septic system at the George Merrow House.

The NPS proposed action (i.e., give approval to proceed with construction) follows from the terms of the reserved estate agreement between NPS and High Point, Ltd. As noted above, the agreement provides that High Point, Ltd. cannot “add to or materially alter the character of existing improvements or structures contained within the High Point Compound ... nor perform any new construction ... without first having obtained the permission in writing of the NPS.” The NPS has decided to grant permission for completion of construction because withholding permission would not have any benefits for Seashore resources. The damage to historic resources is already done, and allowing the new residential structure to be completed would not change the impact to the historic district. The NPS will strive to prevent future damage to historic resources on the island, in part, by implementing an agreement with the SHPO, as discussed below.

The NPS has determined that completion of construction activities will cause minor to moderate adverse impacts to NPS resources and values.

Alternatives Considered

The NPS considered two alternatives in the EA process: one action alternative and a “no-action” alternative (see below). The alternatives are described in more detail in the EA.

Alternative A: No Action/Continue Current Management

Under Alternative 1, the NPS would deny High Point, Ltd. permission to complete proposed new construction at the High Point Compound.

Alternative B: Allow Modifications to Structures (preferred alternative)

Under Alternative B, the NPS would allow High Point, Ltd. to construct a new residential structure, install two new septic systems, and install underground (buried) utilities. The new residence, which is already partially constructed, is a 2-1/2 story, wood frame structure built on cinder block piers. It has a footprint of approximately 2,070-square feet. The building will have board and batten siding and a cross-gabled roof with fiberglass shingles. Other features include an open garage on the south end, a screened porch on the west side, and a stucco chimney. A septic system, to include a collection tank and drain field, will handle wastewater. The new structure's style and appearance will be similar to other residential buildings in the compound.

High Point, Ltd. also proposes to repair a failing septic system at the George Merrow House. The old drain field is to be abandoned in place and a new drain field will be excavated and constructed. The trenches for the new drain will run off the existing septic tank with two parallel runs approximately 50-feet long, 3-feet wide, and 4-feet deep. Drain cells and pipe will be assembled and the trenches backfilled.

Selected Alternative

The NPS has chosen Alternative B from the EA (Allow Modifications to Structures) as the selected alternative. Through the EA process, the NPS has determined that this alternative successfully fulfills identified objectives without resulting in a significant impact to the human environment.

The objective in taking this action is to comply with the requirements of the reserved estate agreement with High Point, Ltd. while protecting Seashore resources.

The following specific objectives related to allowing completion of construction were developed with Seashore staff during internal scoping:

General

- Allow exercise of reserved rights while ensuring that the Seashore's natural and cultural resources are conserved for future generations.
- Minimize future restoration and maintenance expenditures needed by the Seashore when the reserved estate expires.

Soils, Water, Vegetation, and Wildlife

- Protect soil, water, vegetation, and wildlife resources from impacts associated with the proposed actions.

Cultural Resources

- Protect cultural resources, including possible archeological sites.
- Protect the context of existing features on or eligible for listing on the NRHP.

Alternative B provides the most desirable combination of actions for meeting these objectives and fulfilling the Seashore's mission to protect and preserve its natural and cultural resources.

Alternative B was chosen because it provides the greatest benefit to Seashore resources, with minor to moderate adverse environmental impacts.

Mitigation and Minimization Measures of the Selected Alternative

For the Merrow House septic system repair, the NPS will require, per recommendations from the NPS Southeastern Archeological Center (SEAC), that two parallel 50-foot sections be used for the drain field to avoid a potentially historic trash dump in the adjacent woodland.

As mitigation for the adverse effect on the historic property (i.e., the demolished barn), the NPS will implement the following actions, per the signed Memorandum of Agreement (MOA) with the SHPO attached hereto:

- All remaining structures that are located within the High Point Compound, which are not currently on the NPS List of Classified Structures (LCS), shall be inventoried and entered into the LCS as appropriate.
- All currently listed structures within the High Point Compound, as well as those added through the updated inventory, shall have a general plan identified for the structure and/or district, which is to be implemented when the compound comes under full NPS management. Each plan shall be entered into the *Management – Description* field of the respective LCS records. The SHPO and the NPS recognize that the reserved agreement with High Point, Ltd. is for a life estate and that the agreement is likely to be in place for another 50 years or more.
- The newly appointed Superintendent of CUIS shall review the reserve agreements for each of the retained estate holders on the island prior to meeting with those parties. During the initial meeting between the Superintendent and the retained estate holder(s), the Superintendent shall (a) identify the historic properties located on the retained estate, and (b) review the applicable rights each party may have with respect to construction, improvements, repairs, or other development projects within their respective properties. The Superintendent will also review NHPA and NEPA compliance requirements with the retained estate holders. It is projected that a new Superintendent will be in place at the Seashore before July, 2009.

Except as otherwise provided in the MOA, and to the extent practicable, the stipulations set forth above shall be implemented by **February 26, 2010**.

Environmentally Preferred Alternative

Of the two alternatives described above, Alternative B was identified as environmentally preferred in the EA. The environmentally preferred alternative is determined by applying criteria set forth in NEPA, as guided by regulations issued by the CEQ. The CEQ regulations provide direction that “[t]he environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA’s Section 101(b). Generally this means the alternative which causes the least damage to the biological and physical environment. It also means the alternative that best protects, preserves, and enhances historic, cultural, and natural resources.” This includes alternatives that:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all generations safe, healthful, productive, and esthetically and culturally pleasing surroundings;

- Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
- Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

The NPS has determined that Alternative B is the environmentally preferred alternative because it is the alternative that best achieves consistency with the above 6 bulleted values of Sections 101 and 102(1) of NEPA. This alternative balances impacts to Seashore resources (adverse impacts associated with demolition of an altered, dilapidated contributing structure) with long-term sustainability (beneficial impacts resulting from replacement of old or failing septic systems). It thereby preserves diversity and variety of individual choice, a sharing of life's amenities, and healthful and pleasing surroundings. Alternative A is not environmentally preferred because it would leave in place old or failing septic systems.

Why the Selected Alternative will Not Have a Significant Effect on the Human Environment

Consideration of the effects described in the EA, and a finding that they are not significant, is a necessary and critical part of this FONSI, as required by 40 CFR §1508.13. Significance criteria are defined in 40 CFR § 1508.27. These criteria direct NPS to consider direct, indirect, and cumulative impacts of the proposed action, as well as the context and intensity of impacts:

Context. This measure of significance considers the setting within which an impact was analyzed in the EA, such as the affected region, society as a whole, affected interest, and/or a locality. The selected alternative affects only the immediate local area, in terms of resources, employees, and/or visitors. Therefore, any possible impact is limited to this level of least significance.

Intensity. This measure of significance refers to the severity of impacts, which may be both beneficial and adverse, and considers measures that will be applied to minimize or avoid impacts. As directed by 40 CFR § 1508.27, intensity is evaluated by considering the following factors:

Impacts that may be both Beneficial and Adverse

The selected alternative will have impacts on soils that are negligible to minor, long term, and adverse, while impacts to water quality will be negligible to minor, long term, and beneficial. Impacts to vegetation and wildlife will be negligible, long term, and adverse. In contrast, impacts to cultural resources (specifically, the High Point - Half Moon Bluff National Register Historic

District) would be minor to moderate in intensity, long-term and adverse. Given that most of the damage is already done, allowing the new residential structure to be completed would not change the impact to the historic district. In addition, the NPS and the SHPO have entered into a MOA that sets forth specific mitigation actions that the NPS must implement. Overall impacts to the historic district would be minor to moderate in intensity, long-term and adverse. In light of the foregoing, the proposed action would not result in significant impacts on the human environment.

Degree of Effect on Public Health and Safety

Implementation of the selected alternative will allow installation of new, properly functioning septic systems that would have beneficial impacts on groundwater in the vicinity of the High Point Compound. Impacts would likely be negligible to minor, long term, and beneficial. The selected alternative will thus have long-term benefits for public health and safety.

Unique Characteristics of the Geographic Area such as Proximity to Historic or Cultural Resources, Park Lands, Prime Farmlands, Wetlands, Wild and Scenic Rivers, or Ecologically Critical Areas

Lands at the Seashore contain ecologically critical wildlife habitat, wetlands, and historic and archaeological sites. Based on the EA findings, it has been determined that the selected alternative will not have significant impacts to unique characteristics in the immediate vicinity or regionally. The NPS will implement specific mitigation actions to partially offset impacts from the past demolition of the historic barn. There are no other unique characteristics of the geographic area that are affected by the proposed construction.

Degree to which Effects on the Quality of the Human Environment are Likely to be Highly Controversial

Department of the Interior regulations implementing NEPA provide that the term “controversial” refers to “circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.” 46 CFR § 46.30. In the present instance, no substantial dispute exists as to the environmental consequences of allowing completion of currently-suspended construction activities at the High Point Compound. Most commenters on the EA objected strenuously to the NPS preferred alternative, but did not identify any substantial environmental impacts omitted from or mischaracterized by the EA. Therefore, the effects from the selected alternative are not likely to be highly controversial.

Degree to which the Possible Effects on the Human Environment are Highly Uncertain or Involve Unique or Unknown Risks

The effects of the selected alternative are relatively straightforward and easily predicted. The selected alternative and the MOA with the SHPO attempt to compensate for these risks by including specific mitigation actions that protect as much as possible the cultural resources of the Seashore. The NPS has determined that the extent and degree of uncertainty regarding impacts or unique or unknown risks is not significant.

Degree to which the Action Establishes a Precedent for Future Actions with Significant Effects or Represents a Decision in a Principle about a Future Consideration

Nothing in the selected alternative establishes a precedent that would result in significant effects in the management of the Seashore or any other areas in the National Park System. The NPS intends to prevent future destruction of historic structures by implementing the required actions in the MOA with the SHPO. In particular, per the third stipulation in the MOA, the NPS will meet with each retained estate holder and (a) identify the historic properties located on the retained estate, and (b) review the applicable rights each party may have with respect to construction, improvements, repairs, or other development projects within their respective properties. The Superintendent will also review NHPA and NEPA compliance requirements with the retained estate holder.

Whether the Action is Related to Other Actions with Individually Insignificant but Cumulatively Significant Impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact to the environment.

The proposal to grant permission for completion of construction is a discreet and locally contained action. There are no significant cumulative impacts associated with the selected alternative.

Degree to which the Action may Adversely Affect Districts, Sites, Highways, Structures, or Objects Listed or Eligible for Listing in the National Register of Historic Places or may Cause Loss or Destruction of Significant Scientific, Cultural or Historic Resources

The NPS, as a Federal land-holding agency, is required to locate, inventory, and nominate properties to the National Register of Historic Places, and to exercise caution to protect such properties under Section 106 of the NHPA.

After applying the Advisory Council on Historic Preservation's criteria of adverse effects (36 CFR Part 800.5, *Assessment of Adverse Effects*), NPS concludes that implementation of the preferred alternative (authorize completion of construction activities) would not in and of itself have an adverse effect on the High Point - Half Moon Bluff National Register Historic District at the Seashore. However, NPS acknowledges that the demolition of the converted barn, which occurred before NPS became aware of the project, has had an *adverse effect* on a historic property. Accordingly, the NPS has entered into an MOA with the SHPO (attached hereto) that sets forth measures NPS must implement to mitigate the adverse effect.

Degree to which the Action May Affect an Endangered or Threatened Species or Critical Habitat

Historical review and field observations were performed to identify the presence of threatened or endangered species or potential habitat for these species. Fourteen (14) species of importance are known to exist on and around Cumberland Island. The selected alternative will not affect any threatened or endangered species.

Whether the Action Threatens a Violation of Federal, State, or Local Law or Requirements Imposed for the Protection of the Environment

The selected alternative does not threaten a violation of any Federal, State, or local law or requirement imposed for the protection of the environment.

Impairment

In addition to reviewing the list of significance criteria, the NPS has determined that implementation of the selected alternative will not result in impairment to the Seashore's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the site-specific EA, public comment, relevant scientific studies and professional judgment as guided by the direction in *NPS Management Policies 2006*.

Public Involvement

The EA was released for public review on February 2, 2009. Availability of the EA was announced through a Legal Public Notice in the local news media and through the NPS Planning, Environment and Public Comment (PEPC) website at <http://parkplanning.nps.gov/cuis>.

A total of 103 comments were received by the NPS during the EA comment period. Almost all comments expressed disapproval of Alternative B (NPS preferred alternative). All comments were from individual citizens. Many commenters felt that the NPS had not adequately explained its reasons for identifying Alternative B as the preferred alternative. The NPS has identified this concern as a substantive comment and has prepared a response. The response is included in the errata sheets attached hereto and made a part of this FONSI.

Conclusion

The selected alternative (Alternative B – Allow Modifications to Structures) does not constitute an action that normally requires preparation of an Environmental Impact Statement (EIS). The selected alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are minor and temporary in effect. There are no unmitigated adverse impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the NRHP or other unique characteristics of the region. No highly uncertain or controversial impacts, unique or unknown risks, cumulative effects or elements of precedent were identified. Implementation of the selected alternative will not violate any Federal, State or local environmental protection laws.

Based on the forgoing, it has been determined that an EIS is not required for this project and thus will not be prepared.

Recommended: [/s David Casey]_____ 3/12/09_____
Acting Superintendent, Cumberland Island
National Seashore Date

Approved: [/s Art Frederick for _____ 3/13/09_____
Regional Director, Southeast Region Date

CUMBERLAND ISLAND NATIONAL SEASHORE

ENVIRONMENTAL ASSESSMENT

ALLOW CONSTRUCTION OF NEW STRUCTURE AT HIGH POINT RESERVED ESTATE

ERRATA

As required by the National Park Service (NPS) Director's Order No. 12, the following errata sheets respond to all substantive comments submitted on the environmental assessment (EA) entitled "Allow Construction of New Structure at High Point Reserved Estate."

Substantive comments from various individuals have been consolidated and paraphrased for purposes of this document. The comments, with NPS response, are set forth below.

1. Comment: The NPS has not adequately justified its selection of Alternative B. After having recently taken legal action against another island resident for unauthorized construction on a reserved estate, it cannot now turn around and allow High Point Ltd. to complete construction activities at the High Point Compound, especially given that High Point, Ltd. demolished a historic building to make way for its new structure.

The two situations alluded to in the comment are fundamentally different. The NPS believes that the island resident against whom the NPS took legal action has no legal right to build new structures or augment existing structures on the reserved estate he occupies. In the incident in question, the resident continued with construction activities even after having been given explicit instructions to cease and desist. In contrast, the reserved estate agreement with High Point Ltd. states that High Point, Ltd.

shall not add to nor materially alter the character of existing improvements or structures contained within the High Point Compound ... nor perform any new construction or change the topography of the land *without first having obtained the permission in writing of the NPS.*

(Reserved Estate Agreement Paragraph 11) (emphasis added). The foregoing language makes clear that High Point, Ltd. has a legal right to undertake new construction at the High Point Compound so long as it obtains the written permission of the NPS. The NPS acknowledges that High Point, Ltd. did not obtain written permission in this instance. The NPS likewise acknowledges that it may withhold permission to finish construction if it chooses to do so. However, the NPS has determined that withholding permission to finish construction would serve little purpose in this instance.

The NPS fully intends to prevent future unauthorized destruction of historic structures at the Seashore. It will do this, in part, by implementing the required actions set forth in the MOA with the SHPO. A principal objective of the MOA is to insure that all island residents are familiar with their rights and duties with respect to historic structures owned by the United States.